

REMARKS

By this amendment, claim 18 has been amended. Claim 21 has been added. Claims 6 and 9 were previously canceled.

Claims 1-5, 7, 8 and 10-21 are currently pending in the application. Reconsideration and allowance of all of the claims is respectfully requested in view of the following remarks.

In regard to Objection to Claim 18

The Examiner has objected to claim 18 because in line 11, "cargo." should be changed to "cargo;".

Claim 18 has been amended to correct the punctuation in line 11. As such, the Examiner's objection is believed to have been addressed and overcome and should be withdrawn.

In regard to Rejection of Claims 1-5, 7, 8 and 12-16 Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1-5, 7, 8 and 12-16 under 35 U.S.C. § 103(a) as being unpatentable over Tweet, U.S. Patent Application No. 2004/0031640 in view of Hanagan, U.S. Patent No. 4,953,911. The Applicant disagrees.

The Examiner's attention is directed to the following feature of claim 1:

the backrest being substantially level with the cargo rack when
the backrest is in the second configuration.

The Applicant submits that at least the above feature of claim 1 is not taught by Tweet.

Referring to paragraph 3 of the rejection, the Examiner states that

Tweet [...] does not disclose that the passenger seat is transformable between a first configuration to accept a passenger and a second configuration to accept cargo.

By extension, Tweet does not disclose any properties of a second configuration of the passenger seat, and as such does not teach a backrest being substantially level with a cargo rack when the backrest is in a second configuration.

This deficiency in Tweet is not remedied by Hanagan, without admitting that Hanagan can be combined with Tweet and reserving the right to argue thereagainst in the future.

Referring to Figures 1 and 2 of Hanagan, it is apparent that Hanagan does not disclose a cargo rack rearward of the passenger seat, or any surface rearward of the passenger seat that would be suitable for receiving cargo. By extension, Hanagan does not disclose any position of a cargo rack relative to a backrest of a passenger seat when the backrest is in a second configuration. Therefore, Hanagan does not teach a backrest being substantially level with a cargo rack when the backrest is in a second configuration.

Referring now to paragraph 6 of the rejection, the Examiner states that

When the backrest of Hanagan is in the horizontal position, it is “substantially” level with the cargo rack of Tweet. It is apparent that the seats of Tweet and Hanagan are of similar size, so the modification would not cause the seat to extend well above the cargo rack. Also, the Examiner notes that even if the backrest is not flush with the cargo rack, larger cargo would still extend across the backrest and provide the same function.

The Applicant disagrees with the Examiner’s assertions.

Regarding the Examiner’s assertion that the backrest of Hanagan would be substantially level with the cargo rack of Tweet when in the horizontal position, the Applicant submits that the prior art provides no indication of the relative heights of the backrest of Hanagan and the cargo rack of Tweet because they are not shown on the same vehicle. In addition, they are not shown on the same type of vehicle, because Hanagan is a “convertible seat for a motorcycle” (title) and Tweet is an ATV (Figure 1). Thus, there is no teaching in the art that the backrest on the motorcycle of Hanagan would be substantially level with the cargo rack of the ATV of Tweet.

In addition, referring to lines 40-46 of column 3 of Hanagan,

The backrest 22 has resiliently deformable padding 62 on the front surface of the body member 54 and a fabric covering 64 thereover, and it has a cover 66 on the rear surface thereof. The front surface of the cover 22 is contoured to mate with the upper surface of the passenger portion 20 of the seat 10 to provide an essentially flush appearance.

Referring also to Figures 1, 2 and 4 of Hanagan, it is apparent that the front surface of the backrest 22 of Hanagan mates with the passenger portion 20 of the seat 10 of Hanagan. In addition, it is apparent from Figures 2, 4 and 5 of Hanagan that the padding 62 and fabric covering 64 give the backrest 22 of Hanagan an appreciable thickness. Thus, the backrest of Hanagan is higher than the passenger portion 20 of the seat 10 of Hanagan when in the second position.

Referring now to Figure 1 of Tweet, it is apparent that the seating position for the passenger 114 of Tweet is higher than the cargo rack (unlabeled) rearward of the seating position for the passenger 114 of Tweet. Thus, even if Tweet could be modified to incorporate the backrest 22 of Hanagan, which is not admitted, the resulting vehicle would have a backrest higher than the passenger seat, which in turn is higher than the cargo rack. Therefore, even if Tweet could be modified in view of Hanagan, the combination would not teach a backrest being substantially level with the cargo rack when the backrest is in the second configuration.

Therefore, at least one feature of claim 1 as amended is not taught by Tweet or Hanagan, alone or in combination, which combination is not admitted. As such, the Examiner is requested to withdraw his rejection of claim 1 and claims 2-5, 7, 8 and 12-16 depending therefrom.

In regard to Rejection of Claims 18-20 Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 18-20 under 35 U.S.C. § 103(a) as being unpatentable over Tweet in view of Hanagan. The Applicant believes this rejection has been addressed and overcome by the present amendment.

Referring to paragraph 3 of the rejection, the Examiner states that

[w]ith respect to claim 18, the recitation that the passenger seat is "removable" from the vehicle does not serve to distinguish because it is narrative in form. The recitation is not supported

by recitation in the claim of sufficient structure to warrant the presence of the functional language. Further, it has been held that the recitation that an element is “capable of” performing a function is not a positive limitation but only requires the ability to perform.

The Applicants have deleted the expression “the passenger seat being removable from the vehicle” from claim 18. This is a broadening amendment, and no surrender of claim scope is intended thereby.

The Examiner’s attention is now directed to the following feature of claim 18:

moving the seat portion between a first position and a second position [...]

The Applicants submit that at least the above feature of claim 18 is not taught by Tweet.

Referring to paragraph 3 of the rejection, the Examiner states that

Tweet [...] does not disclose that the passenger seat is transformable between a first configuration to accept a passenger and a second configuration to accept cargo.

By extension, Tweet does not disclose the passenger seating position 114, 214 being moved between a first position and a second position. Therefore, Tweet does not teach moving the seat portion between a first position and a second position.

This deficiency in Tweet is not remedied by Hanagan.

Referring to Figure 4 of Hanagan, it is apparent that Hanagan does not disclose the passenger seat portion 20 having a second position. By extension, Hanagan does not disclose the passenger seat portion 20 being moved between a first position and a second position. Therefore, Hanagan does not teach moving the seat portion between a first position and a second position.

Therefore, at least one feature of claim 18 as amended is not taught by Tweet or Hanagan, alone or in combination, which combination is not admitted.. As such, the Examiner is requested to withdraw his rejection of claim 18 and claims 19 and 20 depending therefrom.

In regard to Rejection of Claim 10 under 35 U.S.C. § 103(a)

The Examiner has rejected claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Tweet in view of Hanagan and further in view of McNichol, U.S. Patent No. 3,873,127. The Applicant disagrees.

The Examiner's attention is directed to the following feature of claim 1:

the backrest being substantially level with the cargo rack when the backrest is in the second configuration.

As discussed above with respect to claims 1-5, 7, 8 and 12-16, the above feature of claim 1 is not taught by Tweet or Hanagan, alone or in combination, which combination is not admitted.

The Applicant submits that this deficiency in Tweet and Hanagan is not remedied by McNichol, without admitting that McNichol can be combined with Tweet and reserving the right to argue thereagainst in the future.

Referring to Figure 2 of McNichol, it is apparent that McNichol does not teach any structure rearward of the multipurpose rack 10 when it acts as a passenger seat, and therefore McNichol does not teach a cargo rack rearward of a passenger seat or, by extension, any position of a cargo rack relative to a backrest of a passenger seat when the backrest is in a second configuration.

Referring to Figure 1 of McNichol, it is further apparent that when the second section 44 is configured to accept cargo, the second section 44 is not substantially level with any structure rearward of the passenger seat of McNichol. Therefore, McNichol does not teach a backrest being substantially level with a cargo rack when the backrest is in a second configuration.

Therefore, at least one feature of claim 1 as amended is not taught by Tweet, Hanagan or McNichol, alone or in combination, which combination is not admitted.. As such, the Examiner is requested to withdraw his rejection of claim 10 depending therefrom.

Miscellaneous amendments

By the present amendment, claim 18 has been amended. This amendment is believed to be supported by the specification as originally filed, in particular Figures 3 and 4 thereof.

By the present amendment, claim 21 has been added. Claim 21 is believed to be supported by the specification as originally filed, in particular Figures 3 and 4 thereof. Claim 21 is believed to be allowable because of its dependency from claim 1, as well as the additional features recited therein.

In view of the above amendments and remarks, the Applicant respectfully submits that all of the currently pending claims are allowable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in a better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

At the time of filing of the present response, no fees were believed to be necessary. In case any fee should be necessary, the Office is hereby authorized to debit Deposit Account number 502977.

Respectfully submitted,

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